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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LAS VEGAS SUN, INC.,

Plaintiff,

v.

SHELDON ADELSON, et al.,

Defendants.

AND RELATED COUNTERCLAIM

Case No. 2:19-cv-01667-ART-VCF

**EMERGENCY MOTION TO EXPEDITE
RESOLUTION OF DEFENDANTS'
MOTION TO DISSOLVE PRELIMINARY
INJUNCTION [ECF NO. 852]**

1 Defendant/Counterclaimant Las Vegas Review-Journal, Inc., and Defendants
 2 News+Capital Group LLC, Estate of Sheldon Adelson, Patrick Dumont, and Interface Operations
 3 LLC dba Adfam (collectively, “Defendants” or the “Review-Journal”), by and through their
 4 counsel of record, Kemp Jones LLP, Jenner & Block LLP, and Richard L. Stone, Esq., hereby
 5 respectfully move this Court, pursuant to Local Rule 7-4, for an order expediting the resolution of
 6 the motion to dissolve the preliminary injunction filed on June 9, 2023 (ECF No. 852) (the
 7 “Motion”).

8 This motion is based on the following memorandum of points and authorities, the
 9 Declaration of Michael J. Gayan attached as **Exhibit A**, the papers and pleadings on file in this
 10 action, and any argument the Court may allow at a hearing on the motion.

11 **I. The Court Should Expedite Resolution of the Motion to Dissolve Preliminary**
 12 **Injunction.**

13 As set forth in the Review-Journal’s briefing in support of its Motion (ECF Nos. 852, 886),
 14 the Review-Journal’s position is that the 2005 JOA between the Review-Journal and the Sun is an
 15 illegal agreement because it was never approved in writing by the U.S. Attorney General as
 16 required by the Newspaper Preservation Act (“NPA”). 15 U.S.C. § 1803(b) (“It shall be unlawful
 17 for any person to enter into, perform, or enforce a joint operating arrangement, not already in effect
 18 [as of July 24, 1970], except with the prior written consent of the Attorney General of the United
 19 States.”). Because the 2005 JOA is illegal, the Review-Journal has argued the injunction requiring
 20 the Review-Journal to continue to perform under the 2005 JOA is also unlawful. Thus, the Review-
 21 Journal is harmed with each day that passes by its forced compliance with an illegal agreement
 22 that handcuffs it to a competitor that is intentionally degrading the quality of its paper and
 23 affirmatively attempting to drive readers away from the combined *Review-Journal/Sun* print
 24 product. *See* ECF No. 886 at 11.

25 If the Court finds that the Review-Journal is correct that the 2005 JOA—and the injunction
 26 forcing the Review-Journal to comply with that agreement—violates the NPA, then the Court has
 27 an independent duty to dissolve the unlawful injunction without delay. *See Kaiser Steel Corp. v.*
 28 *Mullins*, 455 U.S. 72, 83–84 (1982) (“Where the enforcement of private agreements would be

1 violative of [a federal statute], it is the **obligation** of courts to refrain from such exertions of judicial
 2 power.”) (emphasis added) (citation omitted). Accordingly, the Review-Journal respectfully
 3 requests that the Court expedite its resolution of the Review-Journal’s Motion so that it can
 4 determine whether it has an obligation to immediately dissolve the injunction keeping the 2005
 5 JOA in place.

6 **II. Emergency Relief Is Warranted.**

7 An emergency motion is properly presented where the movant shows “(1) that it will be
 8 irreparably prejudiced if the Court resolves the motion pursuant to the normal briefing schedule
 9 and (2) that the movant is without fault in creating the crisis that requires emergency relief, or at
 10 the very least that the crisis occurred because of excusable neglect.” *Cardoza v. Bloomin’ Brands,*
 11 *Inc.*, 141 F. Supp. 3d 1137, 1142 (D. Nev. 2015).

12 If the Review-Journal is correct and it is being forced to comply with an unlawful
 13 injunction, the Review-Journal is being irreparably prejudiced. Thus, this is an emergency under
 14 the rules and precedent of this Court. *See, e.g., North v. Bank of Am. Corp.*, 2011 WL 346070, at
 15 *3 (D. Nev. Feb. 2, 2011) (granting emergency motion to dissolve temporary restraining order and
 16 preliminary injunction, and explaining that “[t]emporary restraining orders and preliminary
 17 injunctions are extraordinary forms of relief” that cannot be maintained where the party seeking
 18 the injunction “has not demonstrated a likelihood of success on the merits”). Indeed, courts in this
 19 District regularly grant emergency motions in situations where there is no imminent risk of
 20 extreme harm, including in cases involving an opposing party’s failure to respond to discovery and
 21 the improper designation of an expert witness. *See Renfrow v. Redwood Fire & Cas. Ins. Co.*, 288
 22 F.R.D. 514, 524 (D. Nev. 2013) (granting in part emergency motion to compel discovery); *Downs*
 23 *v. River City Grp., LLC*, 288 F.R.D. 507, 514 (D. Nev. 2013) (granting emergency motion for
 24 protective order with respect to expert deposition and to strike designation of expert as testifying
 25 expert).

26 The Review-Journal readily meets the level of exigency required by the standard for
 27 emergency relief.

1 *First*, if the 2005 JOA is unlawful, then the Review-Journal is irreparably harmed each day
2 it is forced to comply with it. If the Court agrees that the 2005 JOA is unlawful, then it has an
3 independent duty to dissolve without delay the preliminary injunction enforcing the agreement.
4 ECF No. 852 at 16–23; ECF No. 886 at 11–12. The illegal 2005 JOA yokes the Review-Journal
5 to a competitor that fills its print pages with a disproportionate quantity of third-party content from
6 national news services that do not cover the Las Vegas community; which hordes the original
7 content created by its newsroom solely on its website; and which has tried to drive readers away
8 from the print product by publishing “A Note from the Sun” that encouraged newspaper readers
9 to subscribe to the Sun’s website rather than to the print product. ECF No. 886 at 12; ECF No.
10 859-5. The Review-Journal would be irreparably prejudiced if resolution of the Motion were to
11 take months while the Review-Journal continues to be forced to comply with the unlawful status
12 quo. On the other hand, the Sun will suffer no prejudice if the Motion is resolved on an expedited
13 basis as it has already had the opportunity to file an opposition to the Review-Journal’s Motion.

14 *Second*, the Review-Journal is without fault in creating the situation that requires the
15 requested relief. As described in the Review-Journal’s Motion, at the time it stipulated to entry of
16 the preliminary injunction, the Sun had just alleged in its Complaint—verified by owner Brian
17 Greenspun—that the 2005 JOA was “authorized by the Newspaper Preservation Act . . . and
18 approved by the Department of Justice.” ECF No. 1 at 2. This allegation, accepted as true,
19 prevented the Court from ruling on the illegality of the 2005 JOA at the pleading stage, ECF No.
20 243 at 8–9, so the parties were required to complete discovery before the Review-Journal could
21 seek judicial relief on this issue. It was only recently, after the fact that the 2005 JOA was never
22 approved in writing by the U.S. Attorney General was conclusively borne out in discovery, that
23 the Review-Journal could seek the Court’s resolution regarding the 2005 JOA’s illegality and
24 request that the Court dissolve the preliminary injunction keeping the 2005 JOA in place. *See* ECF
25 No. 886 at 10–11.

26 Shortly after the close of discovery, the Review-Journal moved to dissolve the preliminary
27 injunction, and now, after having given the Sun sufficient time to oppose its Motion, the Review-
28 Journal seeks expedited resolution of that Motion so that it can cease complying with the illegal

2005 JOA. The Review-Journal acted promptly in moving to dissolve the 2005 JOA and was without fault in creating the situation that necessitated this Motion.

CONCLUSION

Accordingly, the Review-Journal respectfully requests that the Court grant its motion for expedited resolution of its motion to dissolve the preliminary injunction entered in this matter (ECF No. 852).

Dated: September 12, 2023

KEMP JONES LLP

By: /s/ Michael Gayan

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PROOF OF SERVICE

I hereby certify that on the 12th day of September, 2023, I served a true and correct copy of the foregoing **EMERGENCY MOTION TO EXPEDITE RESOLUTION OF DEFENDANTS' MOTION TO DISSOLVE PRELIMINARY INJUNCTION [ECF NO. 852]** via the United States District Court's CM/ECF electronic filing system to all parties on the e-service list.

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I further certify that on the 12th day of September, 2023, pursuant to LR 7-4(d), I also emailed a copy of this Emergency Motion to the Courtroom Administrators for the assigned United States District Judge and United States Magistrate Judge:

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/s/ Pamela McAfee
An employee of Kemp Jones LLP

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INDEX OF EXHIBITS

Exhibit	Description
A	Declaration of Michael J. Gayan in Support of Emergency Motion to Expedite Resolution of Defendants' Motion to Dissolve Preliminary Injunction [ECF No. 852]